

3
OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

ORIGINAL
ILLINOIS
COMMERCE COMMISSION
MAY 1 1 21 PM '01
CHIEF CLERK'S OFFICE

Commonwealth Edison Company :
:
Application of Commonwealth Edison : 01-0336
Company for a Certificate of Public :
Convenience and Necessity, under Section :
8-406 of the Illinois Public Utilities Act :
to construct, operate and maintain a :
34, 000 volt electric supply line in Cook :
County, Illinois. :

COUNTER-MOTION OF THE VILLAGE OF PALATINE
TO DENY MOTION FOR TEMPORARY CERTIFICATE

Now comes the Village of Palatine ("Palatine"), by and through its Special Counsel, Mark L. Goldstein, and moves the Illinois Commerce Commission ("Commission") to deny the Motion for Temporary Certificate ("Motion") filed by Commonwealth Edison Company ("ComEd"), and in support thereof, states:

1. ComEd seeks a temporary certificate pursuant to Section 8-406 of the Public Utilities Act ("Act") alleging that an emergency exists; that there is an immediate need to serve Motorola, Inc. in Deer Park, Illinois; that the proposed route passes through Palatine and is the most direct, least cost route; that Palatine municipal ordinance requires the underground burial of the 34 kV line due to its length; and that Palatine has all the information requested and necessary to review and approve the project.
2. ComEd's Motion fails to make a *prima facie* showing, without the opportunity for discovery and evidentiary hearings, that it is entitled to a temporary certificate under Section 8-406(e) of the Act.

3. In July 2000, based upon information and belief, ComEd and the communities surrounding the proposed Motorola campus in Deer Park knew that electric service would be required. Com Ed did not meet with Palatine personnel until March 7, 2001 to begin discussions regarding the proposed route through Palatine. (See Affidavits of ComEd's Joseph D. Trexler; and Palatine's Village Manager, Michael J. Cassidy, attached hereto as Exhibit A). This substantial time lapse forces the Commission and Palatine to rush to an uninformed judgement regarding the proposed route without adequate information regarding whether the proposed route will promote the public convenience and necessity required by Section 8-406. Once the Commission grants the temporary certificate and the line is buried, in effect, the Commission has prejudged that the permanent certificate will be granted without the benefit of in-depth discovery and evidentiary hearings.

4. ComEd has failed to provide any direct proof from Motorola that it seeks electric service from ComEd commencing July 5, 2001, thus no emergency has been demonstrated.

5. Paragraph 4 of the Motion alleges, by way of conclusion and without any proof, that the proposed route through Palatine is the most direct and least cost route. ComEd advised Palatine that the most direct route is from ComEd's existing Lake Zurich line. This allegation can only be proven after discovery and evidentiary hearings.

6. Paragraph 4 of the Motion further alleges that the Palatine Village Council has failed to promptly act on ComEd's request to run its line through Palatine. On April 23, 2001, the Palatine Village Council passed a resolution approving the proposed line subject to conditions. A copy of the Village Council's resolution as reflected in the Village Council's draft minutes is attached hereto as Exhibit B. The minutes reflect that Palatine has requested, but has neither been provided with

adequate and complete cost information regarding the proposed line, nor has it been given sufficient time to make an informed decision to protect the public health, safety and welfare.

7. ComEd's proposed 34 kV line will provide no electric service to Palatine consumers and thus provides no public benefit and is not in the public interest.

8. Section 8-406(e) requires that the proposed line serve "customers." If granted, the temporary certificate would serve only the Motorola campus in Deer Park. Since the electricity would not be sold or consumed in Palatine, Rider 28 is inapplicable and Palatine consumers should not be required to pay for the line.

9. In sum, ComEd's Motion has failed to demonstrate that an emergency exists; that the public will be inconvenienced; and that more than one customer will be served, all as required by Section 8-406(e) of the Act. Moreover, ComEd has failed to provide sufficient information and cost figures necessary to properly consider the Motion. Keeping in mind that a substantial portion of the proposed line would be buried, granting the temporary certificate is tantamount to granting the permanent certificate. While ComEd could dig up the line, the cost and time required to do so make it impractical and inefficient. Palatine should not be required to pay for the burial of the line which will only provide service to Motorola in Deer Park. Procedural due process requires that adequate discovery and evidentiary hearings are needed to determine whether ComEd is entitled to the emergency relief it seeks in its Motion for Temporary Certificate and, ultimately, the permanent Certificate of Public Convenience and Necessity it seeks in this proceeding.

WHEREFORE, the Village of Palatine respectfully moves that the Motion for Temporary Certificate filed by Commonwealth Edison Company be denied.

Respectfully submitted,

Village of Palatine

By: 
Its Special Counsel

MARK L. GOLDSTEIN
3710 Commercial Avenue, Suite 1
Northbrook, IL 60062
(847) 564-5573

CERTIFICATE OF SERVICE

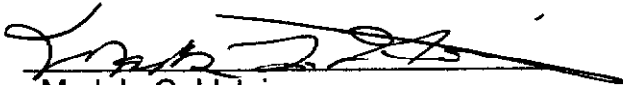
I, MARK L. GOLDSTEIN, hereby certify that I served the foregoing Counter-Motion of the Village of Palatine to Deny the Motion for Temporary Certificate, to the following parties, in the manner indicated, on the 30th Day of April, 2001, on or before 5:00 p.m.

Ms. Donna M. Caton
Chief Clerk
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
(Via Fed Ex Delivery)

Mr. Paul F. Hanzlik
Ms. Cynthia A. Fonner
Mr. Christopher W. Zibart
Foley & Lardner
70 West Madison Street
Chicago, IL 60602
(Via Facsimile)

Ms. Erin M. O'Connell-Diaz
Hearing Examiner
Illinois Commerce Commission
160 North LaSalle Street
Chicago, IL 60601
(Via Facsimile)

Mr. Phil Hardas
Mr. Ron Linkenback
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
(Via Facsimile)



Mark L. Goldstein
Special Counsel
Village of Palatine

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

AFFIDAVIT

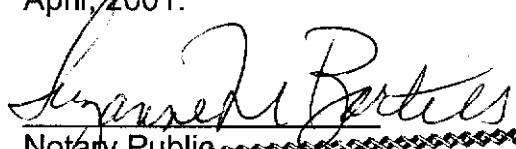
MICHAEL J. CASSADY, being first duly sworn on oath states, as follows:

- 1) That he is the Village Manager of the Village of Palatine.
- 2) That he has read the foregoing Counter-Motion of the Village of Palatine to Deny Motion for Temporary Certificate and is familiar with facts set forth in the Counter-Motion and that same are true and correct;
- 3) That as to those matters stated on information and belief, he verily believes the same to be true.
- 4) That if called to testify regarding same, his testimony would be consistent with the statements set forth in the Counter-Motion.



Michael J. Cassady

Subscribed and Sworn to
before me this 27th day of
April, 2001.



Notary Public

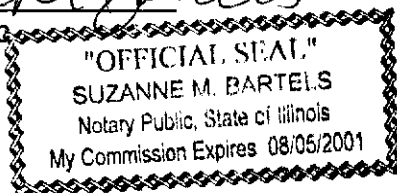


EXHIBIT A

Minutes of the Regular Meeting of April 23, 2001

these conditions.

Upon Roll Call: Ayes: Council Members Jezierski, Wilson, Varroney, Solberg,
Wagner, and Kostka

Nays: None

MOTION CARRIED

BUSINESS FINANCE & BUDGET - COUNCILMAN WAGNER

AS SUBMITTED

[REDACTED]

COMMUNITY & ECONOMIC DEVELOPMENT - COUNCILMAN JEZIERSKI

APPROVE PRELIMINARY PLANNED DEVELOPMENT FOR AN EIGHT LOT SINGLE
FAMILY SUBDIVISION NORTH OF POPLAR STREET - SOUTH OF WINNETKA
(CLEARWATER SUBDIVISION) (HUMMEL CONSTRUCTION COMPANY) - DISTRICT
#1

Councilman Kostka, seconded by Councilman Wagner, moved to approve Preliminary Planned Development for an eight lot single family subdivision north of Poplar Street, south of Winnetka to be known as the Clearwater Subdivision, subject to the following conditions. [REDACTED]

1. The planned development shall substantially conform to the plat of subdivision by Precision Land Surveyors, dated 11/2/00, and to the engineering plans by George McCarty, dated 8/1/00, last revised 1/22/01, and to the landscape and tree preservation plan by George McCarty, dated 8/1/00, last revised 1/22/01, except as such plans may be changed to conform to Village Codes and Ordinances and the following conditions:
2. A letter of credit to ensure the completion of the planned development in the amount of \$100,000 and in a form acceptable to the Village shall be submitted prior to the start of construction.
3. A letter of credit and 10% cash bond, to ensure the completion of the public improvements in a form and amount acceptable to the Village Engineer shall be submitted prior to the start of construction.
4. The development shall adhere to the bulk and setback requirements of the R-2 district.
5. Details of the modification to the outfall from the large lake are to be submitted at final planned development review.
6. A covenant shall be added to the final plat that no fill, fences, sheds or other structures can be installed in the rear yards of Lots 1 through 6.
7. An Amendment to the Ethan's Glen Declarations shall be submitted. It shall be in a manner acceptable to the Village Attorney
8. The Declarations shall be submitted in a recordable form and revised in a manner acceptable to the Village Attorney.
9. The following permits are required: MWRD, IEPA, and COE.

REQUEST AND RECESS FOR CLOSED SESSION - PENDING/POTENTIAL LITIGATION

Councilman Wilson, seconded by Councilman Varroney, moved to recess the meeting to go into Closed Session to discuss Pending/Potential Litigation, with intent to return to open session. Time: 8:40 p.m.

Upon Roll Call: Ayes: Council Members Jezierski, Wilson, Varroney, Solberg, Wagner, and Kostka
Nays: None

MOTION CARRIED

RECONVENE

Councilman Varroney, seconded by Councilman Jezierski, moved to reconvene the Village Council meeting. Voice Vote - MOTION CARRIED. Time: 8:49 p.m.

Village Attorney Tom Burney _____ Exhibit A spreadsheet.....he preferred Alternative B1. ???Cost 2,384.....the difference would be paid by Palatine residents. The Village of Palatine wants a "firm...not to exceed cost".....\$1,284,000.

Mr. Crawford was willing to guarantee that figure, if paid up front by Village.

Councilman Varroney, seconded by Councilman Wilson, moved to concur with the Village Attorney that the Village has not been provided sufficient information and figures and approve Alternative B1 and ComEd commit to an amount not to exceed \$1,284,000.

Upon Roll Call: Ayes: Council Members Jezierski, Wilson, Varroney, Solberg, Wagner, and Kostka
Nays: None

MOTION CARRIED

Mr. Joe Trackster of ComEd stated that Rider 28 includes how customers will pay. ComEd will also do estimates on time and material.

Councilman Wagner would like another estimate for comparison.

Councilman Wilson, seconded by Councilman Varroney, moved to call the question, (WHICH QUESTION???) _____ . Voice Vote: MOTION CARRIED

Councilman Varroney, seconded by Councilman Wilson, moved to authorize Commonwealth Edison's request for a variance from Chapter 18, Section 20 (the Village Right-of-Way Ordinance) subject to the following conditions:

1. The new line may be installed overhead from Lake Cook Road to Dundee Road within the Village's right-of-way.
2. The remainder of the new 34KV line and the existing 12KV lines are to be installed underground along Hicks Road from Dundee Road south to the Commonwealth Edison right-of-way.
3. All of said approvals are conditioned on Commonwealth Edison providing the Village with an authorized written commitment that the costs shall not exceed \$1,248,000 ± and said work shall be completed in a time frame acceptable to the Village Manager.

The Village Manager is authorized to issue the necessary permits and any other supplemental permits generally consistent with this motion upon the satisfaction of